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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,566	03/15/2004	Frank Semersky	GRM63BUSA	9823
270	7590	05/23/2005	EXAMINER	
HOWSON AND HOWSON ONE SPRING HOUSE CORPORATION CENTER BOX 457 321 NORRISTOWN ROAD SPRING HOUSE, PA 19477			KIM, EUGENE LEE	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/800,566	SEMERSKY ET AL.	
	Examiner	Art Unit	
	Eugene L Kim	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 3-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06092004</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 3-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prevot et al (#5,887,739) in view of Krishnakumar et al (#5,908,128).

Prevot et al substantially show the claimed subject matter including selecting a blow-molded PET container having a sidewall with a dome 12 with a wide-mouth opening with an upper label bumper 24 and lower label bumper 22. Prevot discloses packaging consumer goods, such as, pickles, applesauce and like food products (col 1 lines 12+). Prevot also discloses that the hot-fill process comprises filling containers with a food at an elevated temperature, sealing the containers and then cooling the containers (col 1 lines 32+). Prevot appears to disclose that the filling is done with a container that has not been heated so it appears that the container is at ambient temperature prior to filling. (col 1 lines 32). Prevot does not show some of the particulars of the container, such as, a footed base, vertical grooves or crystallinity in excess of 25%. However, Krishnakumar et al show vertical grooves and a footed base 143 so that the plastic container is able to withstand pasteurization to gain the advantages of plastic over glass (col 1 lines 42+). Krishnakumar also discloses the container has an average crystallinity of up to 30% (col 7 lines 1+). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide Prevot with vertical grooves and a footed base as well as the

crystallinity as claimed as taught by Krishnakumar et al to withstand pasteurization with a plastic container. Regarding certain temperature ranges or time intervals as claimed, the examiner notes that applicants specification on p. 7 lines 20+ discloses the common pasteurization temperatures to be in the range of 195-210 F for 10 to 20 minutes. The examiner also notes that optimum ranges via experimentation are within the realm of ordinary skill in the art. See in re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene Kim whose telephone number is (571)272-4463. The examiner can normally be reached on Tuesday-Friday 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


EUGENE KIM
PRIMARY EXAMINER